Supreme Court of the United States

OCTOBER TERM 1933.

No. 944.

J. M. LEE, as Comptroller of the State of Florida,
Appellant,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN,
ALFRED W. MANSFIELD, et al., etc.
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF FLORIDA.

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II.

REFERENCE TO OFFICIAL REPORT OF THE OPINION OF THE LOWER COURT.

The opinion of the Lower Court in this case is reported in 5 Federal Supplement 720, March 26, A. D. 1934, Advance Sheet.

III.

STATEMENT OF THE CASE

This is an appeal from a final decree entered in the United States District Court for the Northern District of Florida, by a three-judge Court convoked under Section 266 of the Judicial Code (Title 28, Section 380, U. S. C. A.), whereby the Comptroller of the State of Florida was enjoined from enforcing the Florida Documentary Stamp

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Tax Act against certain stockbrokers in respect to documents made in Florida in connection with the sale or purchase of stocks or securities on stock exchanges outside of Florida, which sales or purchases were made, or may be made, at the request and direction of Florida customers to the Florida branch offices of the brokers. (R. 91)

The bill of complaint was filed in this case on December 11, A. D. 1933, in the United States District Court in and for the Northern District of Florida (R. 6). On the same day the Judge of that Court entered an order convoking a three-judge Federal Court under Section 266 of the Judicial Code (Title 28, Section 380, U. S. C. A.), and requiring the defendant to show cause why an interlocutory injunction should not issue, and granting a temporary restraining order. (R. 1.) On December 21, the defendant filed his motion to dismiss (R. 38), and on the same day he filed his answer to the bill of complaint (R. 39). On December 21, A. D. 1933, a hearing was had before the Court convoked under Section 266 of the Judicial Code, upon application for an interlocutory injunction, the bill of complaint, affidavits in support thereof, and the motion to dismiss the bill of complaint. On January 18, A. D. 1934, the Court issued an interlocutory injunction enjoining and restraining the defendant from enforcing the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, against the plaintiffs, through requiring that any tax provided for by the Act be paid with respect to, for, or by reason of any written communication, document or memorandum, (except marginal agreements) which may have been or may hereafter be delivered, passed or exchanged by plaintiffs and their

Florida customers, or by their Florida customers to the plaintiffs in connection with or in any manner relating to the transactions for the purchase and sale of stocks or securities on exchanges located outside of Florida, which have been or shall hereafter be made by plaintiffs for or on behalf of their Florida customers, who in Florida have ordered, or may hereafter order, the same to be made, and from levying any tax under the Act upon any books, ledgers, records or memoranda in the possession of the plaintiffs, relating to the sales and purchases referred to above (R. 53.). (See copy of Act attached hereto as Appendix A.) On January 24, A. D. 1934, the Court filed its opinion in the cause, which was written in connection with the entry of the interlocutory injunction. (R. 55.) On March 10, A. D. 1934, the plaintiffs and the defendant filed a stipulation of facts, wherein it was agreed that the facts stipulated therein would be used and considered as competent evidence upon final hearing in the cause, in lieu of testimony of competent witnesses in open Court. (R. 59.) On March 10, A. D. 1934, the Court, pursuant to final hearing upon the pleadings and the stipulation of facts above referred to, entered its final decree granting a permanent injunction enjoining and restraining the defendant from enforcing the terms of the Florida Documentary Stamp Tax Act in the manner hereinabove set forth, which permanent injunction followed the terms of the interlocutory injunction, except as to marginal agreements. (R. 91.)

The pleadings and the stipulation of facts (R. 59) in this cause, show the following facts:

The plaintiffs (appellees) are stockbrokers, some of whose members are also members of New York Stock

Exchange and other stock exchanges operated solely outside the State of Florida. Each firm of stockbrokers maintains several branch offices in the State of Florida, where they accept orders from customers in Florida to buy or sell stocks and bonds upon stock exchanges operated solely outside the State of Florida. The following is a brief summary of the business transacted by the plaintiffs (appellees):

(1) As to a purchase of stock for a Florida customer (R. 62):

The Florida customer desiring to have stock purchased for him by one of the plaintiffs (hereinafter referred to as the broker), gives an order to the broker, either in writing or orally, setting forth the stock to be purchased and the terms of the purchase. Upon receipt of the order, the employee of the broker in the Florida branch office communicates the same to the New York office of the broker by telegraph over the broker's leased private telegraph wire. Upon receipt of the order in the New York office, that office proceeds to execute the same on the floor of the New York Stock Exchange, by entering into a contract with some other member of the Exchange for the purchase of the stock. The delivery of the stock to the broker pursuant to this purchase is accompanied by a "sales ticket" which sets forth the transaction, and this "sales ticket" bears the required amount of Federal and New York State Documentary Stamps. Immediately following the making of such purchase of stock on the floor of the New York Stock Exchange, the New York office of the broker communicates to the Florida branch office over the private telegraph wire of the broker, the fact that the purchase has been made. An employee in

the Florida branch office receives or takes off the telegram by typewriter, making an original and a carbon copy thereof. This telegraphic notice of the purchase sets forth the date and time of the purchase, the number of shares, the name of the stock, the price at which bought, and the serial number of the account of the customer who was represented in the transation. It is the practice of the Florida branch office to notify the customer that the purchase has been made, and this notification customarily is given by delivering either the original or a copy of the telegram received from the New York office. The broker sends formal notice of the transaction from its New York office by mail to the Florida customer. After the purchase of the stock on the New York Stock Exchange, the broker delivers it to the Florida customer by sending it by registered mail to him. Upon receipt of the stock, the customer is required to sign a formal receipt therefor, and to return the receipt to the New York office. The receipt is made in Florida and bears the name of the broker, recites the enclosure of certain stocks which are briefly therein described, gives the name of the customer and the serial number of his account, and contains a place for the signature of the customer.

(2) As to the sale of stock for the Florida customer (R. 66):

An order for the sale of stock is placed by the Florida customer with the Florida branch office of the broker. When this order is in writing, it contains a description of the stock to be sold and the name of the customer or his account number. The customer usually signs the order in person, or he authorizes an employee of the Florida branch office of the broker to sign it on his behalf. Occa-

sionally, the name of the customer is used, but usually he signs his account number in lieu of signing his name. If the customer delivers to the Florida branch office of the broker the stock which he authorizes to be sold, the broker executes and delivers in Florida to the customer a receipt therefor. Upon receipt of the order to sell, the Florida branch office of the broker communicates the order over its private telegraph wire to the New York office, and there the order is executed by a member of the broker's firm upon the New York Stock Exchange. At the time of the sale on the New York Stock Exchange, an exchange contract is entered into between the brokers. The delivery of the stock by the broker in New York, pursuant to this sale, is accompanied by a "sales ticket", which bears the required amount of Federal and New York State Documentary Stamps, and contains a description of the stock and the sales price. Immediately following the making of the sale on the New York Stock Exchange, the New York office of the broker notifies the Florida branch office over its private telegraph wire, and this is received and taken off on a typewriter by an employee of the Florida branch office of the broker, who usually make an original and a carbon copy thereof. This notification sets forth the time and date of the sale, the number of shares and the name of the stock, the price at which it was sold, and the serial number of the customer. Upon receipt of this notice, the Florida branch office notifies the customer. This notification is given either orally or by telephone, or by furnishing the customer with the original or a carbon copy of the telegraphic communication. The broker sends a formal notice by mail from New York to the Florida customer, advising him that the sale has been completed. The New York office

of the broker keeps an accurate account of each customer's transactions, and the Florida branch office of the broker keeps a record of these transactions, but such records are not as full and complete as the New York records, and are only intended to be approximately correct, although they do show all sales and purchases made through the Florida office.

J. M. Lee, as Comptroller of the State of Florida, defendant (appellant), is charged with the duty of administering the Florida Documentary Stamp Tax Act. (See Section 2.) The defendant claims that the following documents involved in this suit are subject to the terms and provisions of the Act (R. 62-70):

1. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch office of the broker to purchase certain stocks for him upon a stock exchange located outside of the State of Florida:

(a) The memorandum made by the employee of the Florida branch office of the broker, which shows that the stock has been purchased as requested. This memorandum is taxable under the Act as a memorandum of sale, whether or not the same is delivered to the Florida customer.

(b) If the stock is delivered in Florida by the Florida branch office of the broker, and a receipt is made and delivered in Florida therefor, the same is taxable as a memorandum of delivery of stock.

2. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch

office of the broker to sell certain stocks upon a stock exchange located outside the State of Florida.

(a) The written order of the Florida customer to the Florida branch office of the broker to sell certain stocks, is taxable under the Act as a unilateral agreement to sell.

(b) If the stock, which is ordered by the Florida customer to be sold, is delivered by him to the Florida branch office of the broker, and a receipt is taken therefor, this is taxable as a memorandum of the delivery of the stock.

(c) The memorandum made by the Florida branch office of the sale of the stock, pursuant to the order to sell given by the Florida customer to the Florida branch office of the broker, is taxable as a memorandum of sale, whether or not the memorandum, or a copy thereof, is delivered in Florida to the Florida customer.

3. In the case of a purchase by the broker of stock on the stock exchange in a State other than the State of Florida for a Florida customer, and in the case of a sale of stock on a stock exchange in a state other than the State of Florida, there is made in the books in the office of the Florida branch office, a memorandum of the sale, and if no other memorandum of the sale or of the delivery is made in Florida, then the entry in the books in the Florida office of the broker is taxable under the Act as a memorandum of sale.

The defendant only claims that a tax should be paid upon the instruments or documents actually made in Florida, and that while there may be several of these instruments in connection with the same transaction, which are taxable under the Act, it is conceded by the defendant

that as to a particular purchase or sale, not more than one of such instruments or documents relating thereto would be taxable.

The Act under consideration was passed by the 1931 Legislature. At that time and continuously until January 3, A. D. 1933, the Honorable Ernest Amos was Comptroller of the State of Florida, and during his tenure of office he construed the Act as not being applicable to the transactions above set forth. The defendant herein (appellant) became the Comptroller of the State of Florida on January 3, A. D. 1933, and has held that office continuously since that time. About six months after he became Comptroller, he undertook to enforce the Act against the plaintiffs and other stockbrokers in respect to the instruments and documents above set forth.

A violation of the Act is declared to be a misdemeanor, and is punishable by a fine not to exceed $200.00 or by imprisonment not to exceed 90 days or both in the discretion of the Court. See Section 7104, Compiled General Laws of Florida, 1927.

During each business day the Florida branch offices of the plaintiff firms handle hundreds of transactions and make hundreds of documents, which under the construction of the defendant are subject to the terms of the Act. The stamps required by the Act to be affixed to documents may be purchased in any amount desired in advance of their use for such purpose. The defendant sets up in his answer, and the same is set forth in the stipulation of facts, that his enforcement of the Act would not be carried out in any unreasonable, arbitrary, or oppressive manner. It is contended by the plaintiffs that the method of enforcement of the Act by the penalty as pro-

vided therein, if strictly and vigorously administered, would afford an opportunity for many separate arrests, fines and imprisonments of the plaintiffs or their employees each day that such business is carried on.

The defendant sets up in his answer, and it appears in the stipulation of facts, that he offered to receive tax payments from the plaintiffs on account of the taxes which he claims to be due and to become due under the terms of the Act, and to impound and safely keep the same pending the ultimate and final decision on the Law side of a Court of last resort, whether State or Federal, providing such suit be filed immediately and prosecuted with all reasonable diligence, and providing that such taxes be paid as they become due, and upon the ultimate decision, should it be adjudged that the taxes or any of them are illegally collected, to repay the same in accordance with such final judgment.

Under the terms of the motion to dismiss (R. 38), the defendant took the position that the plaintiffs had a full, complete and adequate remedy at law, and that for that reason, there was no Federal Equity jurisdiction, and that the bill of complaint should be dismissed. The Court considered this motion at the hearing upon the motion for an interlocutory injunction, and in effect denied the same. The Court also considered the motion on final hearing, and in effect denied the same by the entry of the final decree. (R. 91.)

It was contended by the plaintiffs that an enforcement of the Act would violate the following provisions of the Constitution of the United States, to-wit: Clause 3, Section 8, of Article I, by laying an undue burden on interstate commerce, and Section I of the Fourteenth Amend-

ment, by depriving the plaintiffs of their property without due process of law. The Court in its opinion filed on January 24, A. D. 1934 (R. 55), held that the enforcement of the Act against the plaintiffs in the manner set out therein, would result in the State of Florida taxing property beyond its jurisdiction, and this would have the effect of taking the property of the plaintiffs without due process of law, and that the Act was therefore void to that extent because in conflict with Section I of the Fourteenth Amendment. The Court in its final decree adopted the conclusions of law set forth in the opinion (R. 91).

A copy of the opinion of the Court entered on January 24, A. D. 1934 (R. 55), and a copy of the final decree entered on March 10, A. D. 1934 (R. 91), will be found attached hereto as Appendices B and C respectively.

IV.

SPECIFICATION OF SUCH OF THE ASSIGNED ERRORS AS ARE INTENDED TO BE URGED.

FIRST ASSIGNMENT OF ERROR.

The Court erred in failing to find that there is a complete and adequate remedy and relief at law afforded to the plaintiffs, under the provisions of the statutes of the State of Florida and under the decisions of the Supreme Court of the State of Florida, and that plaintiffs having failed and neglected to avail themselves of such remedy or relief can not now be heard in equity.

SECOND ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually

restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 3 in the Stipulation of Facts as appears on page 78 of the transcript of the record.

THIRD ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 6 in the Stipulation of Facts as appears on page 79 of the transcript of the record.

FOURTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 7 in the Stipulation of Facts as appears on page 80 of the transcript of the record.

FIFTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A.D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda

as illustrated by Exhibit 9 in the Stipulation of Facts as appears on page 81 of the transcript of the record.

SIXTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 12 in the Stipulation of Facts as appears on page 82 of the transcript of the record.

SEVENTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 14 in the Stipulation of Facts as appears on page 84 of the transcript of the record.

EIGHTH ASSIGNMENT OF ERROR.

The Court erred in holding that the enforcement of Chapter 15787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing property of the plaintiffs beyond the jurisdiction of the State of Florida, in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

NINTH ASSIGNMENT OF ERROR.

The Court erred in holding that the enforcement of Chapter 15787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing transactions taking place beyond the jurisdiction of the State of Florida, and thus result in giving the statute extra-territorial effect and taxing property of plaintiffs beyond the jurisdiction of the State of Florida, in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

TENTH ASSIGNMENT OF ERROR.

The Court erred in entering its final decree dated March 10, A. D. 1934, wherein the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State, acting by, through, or under his direction or administration, were permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document, or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on exchanges located outside the State of Florida, which have been, or shall hereafter be, made by the plaintiff brokers, or any of

their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

ELEVENTH ASSIGNMENT OF ERROR.

The Court erred in not dismissing the bill of complaint.

TWELFTH ASSIGNMENT OF ERROR.

The Court erred in making and entering the Final Decree herein on March 10, A. D. 1934, in favor of the plaintiffs and against the defendant.

All assignment of errors will be argued under each question as hereinafter set out. The Court is requested to consider the argument under each question as severally applicable to each of the assignment of errors.

V.

THE ARGUMENT

STATEMENT OF QUESTIONS INVOLVED.

FIRST QUESTION.

Is there federal equity jurisdiction to enjoin the collection of state taxes when, by the law of the state involved, there is an adequate remedy at law to recover taxes paid under protest, if the same are illegally exacted?

SECOND QUESTION.

Are instruments or documents made in Florida, by a Florida customer or by the employees of a Florida branch office of a firm of stockbrokers, in connection with the sale or purchase of stock for the Florida customer on a stock exchange located outside of Florida, subject to the terms of Chapter 15787, Laws of Florida, Act of 1931?

ARGUMENT ON FIRST QUESTION.

Is there federal equity jurisdiction to enjoin the collection of state taxes when, by the law of the state involved, there is an adequate remedy at law to recover taxes paid under protest, if the same are illegally exacted?

We submit that there is no Federal equity jurisdiction, because appellees have an adequate remedy at law for the recovery of the tax if paid under protest, and thereby giving notice that they will seek its return.

This question includes as subheads matters involving the multiplicity of suits as an independent ground of equity jurisdiction, and the question of a suit against the State.

By an unbroken line of decisions beginning in 1887, the Florida Supreme Court has held that a tax wrongfully collected, if paid under protest, may be recovered by the taxpayer in a suit for money had and received:

CRAWFORD VS. BRADFORD, 23 Fla. 404, 2 So. 782, 784.

FLORIDA PACKING & ICE COMPANY VS. CARNEY, 51 Fla. 190, 41 So. 190;

CROOM AS COMPTROLLER VS. PENNINGTON, 58 Fla. 473, 52 So. 957;

SEABOARD AIRLINE VS. ALLEN, 82 Fla. 191, 89 So. 555.

HAMPTON VS. BOARD OF EDUCATION, 90 Fla. 88, 105 So. 323, 42 A. L. R. 1456.

NEW SMYRNA INLET DISTRICT VS. ESCH, 103 Fla. 75, 137 So. 1; Rehearing denied, 103 Fla. 24, 138 So. 49.

These cases were the basis for the decision of the Circuit Court of Appeals of the Circuit in which Florida lies, in the case of HARJIM VS. OWENS, 64 Fed. (2d) 306. (Cert. den. 78 Law Ed. Adv. Op. No. 1, p. 78). This case held:

> "In such a case, their remedy at law to pay their taxes and sue to recover them back being,

under the decisions of the Florida courts, complete and adequate (Seaboard Air Line R. Co. vs. Allen, 82 Fla. 191, 89 So. 555, 557), federal equity jurisdiction may not be invoked.

* * * * *

" * * *. As to each appellee a single suit at law brought to recover the tax will determine its constitutionality, and no facts are alleged showing that more than one suit will be necessary for that purpose."

The leading case decided by this Court is that of MATHEWS VS. RODGERS, 284 U. S. 521, 76 L. Ed. 447, 52 S. Ct. 217, cited in the Harjim case, supra, and from which we quote as follows:

"Section 16 of the Judiciary Act of September 24, 1789, 1 Stat. at L. 82, Chap. 20, perpetuated without material change as Rev. Stat. 723, U. S. C. title 28, section 384, Judicial Code, Section 267, declares that suits in equity shall not be sustained in the courts of the United States 'in any case where plain, adequate and complete remedy may be had at law.' The effect of this section, which was but declaratory of the rule in equity established long before its adoption, is to emphasize the rule and to forbid in terms recourse to the extraordinary remedies of equity where the right asserted may be fully protected at law. See DeWeese vs. Reinhard, 165 U. S. 386, 389; 41 L. Ed. 757, 758; 17 S. Ct. 340; New York Guaranty & I. Co. vs. Memphis Water Co., 107 U. S. 205, 214; 27 L. Ed. 484, 487, 2 S. Ct. 279.

"The reason for this guiding principle is of peculiar force in cases where the suit, like the present one, is brought to enjoin the collection of a state tax in courts of a different though paramount sovereignty. The scrupulous regard

for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this court for review if any federal question be involved, Judicial Code, Section 237, U. S. C. title 28, Section 344, or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present. See Boise Artesian Hot & Cold Water Co. vs. Boise City, 213 U. S. 276, 53 L. Ed. 796, 29 S. Ct. 426; Shelton vs. Platt, 139 U. S. 591, 35 L. Ed. 273, 11 S. Ct. 646; Dows vs. Chicago, 11 Wall. 108, 110, 112, 20 L. Ed. 65, 66, 67.

"It may be assumed that if appellees do not pay the challenged tax, and in consequence of that omission they are subjected, as it is alleged they will be, to the civil and criminal penalties for nonpayment, the resulting injury to their business will be irreparable and can be avoided only by resort to equity to prevent the threatened wrong. But appellants insist that the appellees are under no such constraint, either to expose themselves to the penalties for failure to pay the tax, or to seek equitable relief against its collection, since each of them may pay the tax to the collecting officer under protest and under the laws of Mississippi, may maintain a suit at law

for its recovery on the ground that it was exacted in violation of the Constitution of the United States. That such a procedure saves to the taxpayer his federal right, and if available will defeat the jurisdiction of federal courts to enjoin the collection of the tax, has long been the settled rule in this Court. Henrietta Mills vs. Rutherford County, 281 U. S. 121, 74 L. Ed. 737, 50 S. Ct. 270; Arkansas Bldg. & L. Asso. vs. Madden, 175 U. S. 269, 44 L. Ed. 159, 20 S. Ct. 119; Atchison T. & S. F. R. Co. vs. O'Connor, 223 U. S. 280, 56 L. Ed. 436, 32 Ann. Cas. 1913-C, 1050; Shelton vs. Platt, 139 U. S. 591, 35 L. Ed. 273, 11 S. Ct. 646, supra; Singer Sewing Machine Co. vs. Benedict, 229 U. S. 481, 484; 57 L. Ed. 1288, 1290, 33 S. Ct. 941, supra; Allen vs. Pullman's Palace Car Co., 139 U. S. 658, 35 L. Ed. 303, 11 S. Ct. 682; Indiana Mfg. Co. vs. Koehne, 188 U. S. 681, 47 L. Ed. 651, 23 S. Ct. 452.

"From an examination of the decisions of the highest court of the State we conclude, as the Attorney General of the State insists, that that procedure is open to the appellees in Mississippi, if the tax is paid under protest, to avoid penalties or criminal proceedings.

* * * * *

"Appellees' bill of complaint does not state a case within the jurisdiction of equity to avoid multiplicity of suits. As to each appellee a single suit at law brought to recover the tax will determine its constitutionality, and no facts are alleged showing that more than one suit will be necessary for that purpose. See Boise Artesian Hot & Cold Water Co. vs. Boise City, 213 U. S. 276, 285, 53 L. Ed. 796, 799, 800, 29 S. Ct. 426; Dalton Adding Mach. Co. vs. State Corp. Commission, 236 U. S. 698, 700, 701, 59 L. Ed. 797, 798, 35 S. Ct. 480."

See also *HENRIETTA MILLS VS. RUTHERFORD*, 281 U. S. 121, 74 L. Ed. 737, 50 S. Ct. 270.

HILL VS. WALLACE, 259 U. S. 44, 66 L. Ed. 822, is distinguishable because it involved a federal statute and the most unusual and extraordinary circumstances necessitating 1600 separate suits to collect what would have amounted to virtually a confiscatory tax.

Unusual circumstances are also involved in

RAYMOND VS. CHICAGO TRACTION COMPANY, 207 U. S. 20, 52 L. Ed. 78, 28 S. Ct. 7.

As to the necessity of more than an allegation of mere anticipated multiplicity of proceedings, either civil or criminal, see DALTON ADDING MACHINE COMPANY VS. STATE CORP COMMISSION, 236 U. S. 699, 700, 701, 59 L. Ed 797, 798, 35 S. Ct. 480, which holds that there was nothing to indicate that the statute would be enforced in an oppressive way, and mere anticipation is not sufficient. To like effect see BOISE ARTESIAN HOT AND COLD WATER COMPANY VS. BOISE CITY, 213 U. S. 276, 53 L. Ed. 796, 29 S. Ct. 426.

As to recovery of taxes paid generally, see 61 C. J. 980, 1002; 26 R. C. L., page 454, et seq. (Cited with approval in Seaboard Airline Railway Co. vs. Allen, supra.)

The following cases are the leading cases dealing with the question of whether such suit amounts to a suit against the State:

OSBORNE VS. BANK OF THE UNITED STATES, 9 Wheat. 738, 6 L. Ed. 204

VIRGINIA COUPON CASES, 114 U. S. 270, 285; 29 L. Ed. 185, 5 S. Ct. 903.

ERSKINE VS. VAN ARSDALE, 15 Wall. 75; 21 L. Ed. 63.

A. T. & S. F. VS. O'CONNOR, 223 U. S. 280, 56 L. Ed. 436, 32 Ann. Cas. 1913-C, 1050.

This last was a suit against the Secretary of State of Colorado to recover taxes paid under protest. The Court held (Holmes, J.):

> "The defendant collected the money and it is alleged that he still has it. He was notified when he received it that the plaintiff disputed his right. If he had no right, as he had not, to collect the money, his doing so in the name of the State cannot protect him. Erskine vs. Van Arsdale, 15 Wall. 75. See Virginia Coupon Cases, 114 U. S. 270.
>
> "It is said that the money as soon as collected belonged to the State. Very likely it would have but for the plaintiffs' claim, assuming it to remain an identified trust fund; but the plaintiffs' claim was paramount to that of the State, and even if the collector of the tax were authorized to appropriate specific money and to make himself debtor for the amount, it would be inconceivable that the State should attempt to hold him after he had been required to repay the same."

On the question of a necessity of a showing as to the multiplicity of suits, see the following cases:

HILL VS. WALLACE, supra, wherein the Court by dictum held that 1600 suits would be necessary, but added:

"The right to sue for an injunction against the taxing officials is not, however, necessary to give us jurisdiction."

WESTERN UNION TELEGRAPH COMPANY VS. NORMAN, 77 Fed. 13—sixty-eight county clerks to be sued.

L. & N. RAILWAY VS. GAINES, 3 Fed. 266—Twelve collectors and forty suits in all necesary to obtain repayment.

CHESAPEAKE AND OHIO VS. MILLER, 19 W. Va. 408, (affirmed without reference to this point, 114 U. S. 176, 29 L. Ed. 121)—State Auditor about to certify tax for collection to officers of all counties.

WILSON VS. ILLINOIS S. R. CO., 263 U. S. 574, 68 L. Ed. 456—Tax paid to five counties and five suits necessary.

HOPKINS VS. SOUTHERN CALIFORNIA TELEGRAPH COMPANY, 275 U. S. 393, 72 L. Ed. 329,—Payment to sixteen cities and right to recover uncertain.

In *INDIANA MANUFACTURING COMPANY VS. KOEHNE*, 188 U. S. 681, 47 L. Ed. 651, it was held that Federal Courts should not on ground of preventing multiplicity of suits, enjoin the collection of an Indiana tax, invalid because repugnant to the Federal Constitution, where it appeared that a statute of that State provided that upon payment of an illegal tax and giving of notice, or bringing of suit against the county for a refund, the county would become a trustee for the claimant and could not avoid full liability by thereafter paying over the funds.

In *DALTON ADDING MACHINE COMPANY VS. STATE CORPORATION COMMISSION*, 236 U. S. 699, 59 L. Ed. 797, a Missouri corporation sought to enjoin enforcement of Virginia statute requiring payment of a fee upon the doing of business, the allegation being that the complainant had reason to fear and did fear the multiplicity of proceedings, the imposition of many fines, and the encouragement of like proceedings in other States; but the injunction was held properly denied upon the ground that there was nothing to indicate that the Virginia statue would be enforced against the complainant in an oppressive way.

It will also be noted that in paragraph 18 of the bill of complaint (R. 22), it is specifically alleged that the rules of the New York Stock Exchange provide as follows:

> "No member shall, directly or indirectly, by agreement or otherwise, assume or bear for his own account, or relieve his principal from any part of any stamp tax imposed by the United States or by any State on transfers or sales of securities."

The bill then alleges that for appellees to comply with the demands of the Comptroller would be a violation of said rule. We submit that these allegations show that under no circumstances could appellees suffer damage, because they could not under the rules of the Exchange pay the tax, but would necessarily pass the tax on to the customer.

Furthermore, we call the Court's attention to Section 4225, Compiled General Laws of Florida 1927, which provides:

> "Causes of action, of whatever kind, by and against the same parties in the same rights, may be joined in the same suit, except that replevin and ejectment shall not be joined together nor with other causes of action."

We submit that this statute specifically allows a joinder in a single suit of all causes of action that might arise by virtue of the payment of the tax, should the same be adjudged to have been illegally exacted, and that in one suit each appellee firm could recover back all that had been paid. There cannot possibly be, therefore, a contention of a multiplicity of suits.

We submit, also, that the single act of each appellee firm in purchasing the stamps necesary for its business would successfully preclude the possibility of multiple arrests and criminal prosecutions (even though the Comptroller intended to resort to such action, which he affirmatively denies, and has testified that he would not do), and then in a single action at law recover back all that should be adjudged to have been illegally exacted.

Appellant in his answer (R. 49) specifically offered to receive the tax payments from appellee firms, to impound the same and securely keep and preserve the same (which, under the decision in Seaboard Airline Railway vs. Allen, supra, he not only has the right, but it would be his duty so to do), pending the ultimate and final decision on the Law side of a Court of last resort, either State or Federal, provided such suit be filed immediately and prosecuted with all reasonable diligence; and upon ultimate decision, if it be adjudged that said taxes were illegally exacted or collected, to repay the same in accordance with such final judgment. This conclusively

obviates any contention that a suit at law would not furnish a complete and adequate remedy.

ARGUMENT ON SECOND QUESTION.

For the convenience of the Court, we repeat the second question:

> **Are instruments or documents made in Florida, by a Florida customer or by the employees of a Florida branch office of a firm of stock-brokers, in connection with the sale or purchase of stock for the Florida customer on a stock exchange located outside of Florida, subject to the terms of Chapter 15787, Laws of Florida, Acts of 1931?**

At the outset it should be stated that it is the contention of the appellant that the tax in question is a tax only upon documents *made in Florida*. The appellant makes no claim that the tax involved in this suit is an excise tax upon any sale or other transaction which takes place in a State or Country other than the State of Florida.

STATUTE INVOLVED.

The parts of the above mentioned Act which are pertinent to the discussion herein read as follows:

Paragraph (1) of Section 1:

> "That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and des-

cribed in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association, or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A."

Paragraph (4) of Section 1, being Paragraph (3) of Schedule A.:

"On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10c; and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each share; Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the

certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly."

The Florida Documentary Stamp Tax Act was taken in a large measure from the South Carolina Documentary Stamp Tax Act. That part of the South Carolina Act from which the quoted part of the above mentioned Act was taken reads as follows:

"On all sales, or agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum of other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interest, or rights, or not, on each one hundred ($100.00) dollars of

face value or fraction thereof, four ($0.04) cents, and where such shares are without par or face value, the tax shall be four ($0.04) cents on the transfer of sale or agreement to sell on each share: *Provided, that it is not intended by Sections 2521 to 2554 to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned; Provided, further, that the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts:* Provided, further, that in case of sale where the evidence of transfer is shown only by the books of the corporation, the stamp shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamp shall be placed upon the certificates; and in cases of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, or who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale

of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and, upon conviction, shall pay a fine of not exceeding one hundred ($100.00) dollars, or be imprisoned not more than thirty (30) days, or both."

(Italics supplied).

PARA. 3, SECTION 2525, CODE OF LAWS OF SOUTH CAROLINA, VOLUME, 2, PAGE 228, 1932.

CONTENTIONS OF APPELLANT AS TO THE CONSTRUCTION OF THE ACT.

The Federal Documentary Stamp Tax Act is in many respects similar to the South Carolina Act. See Schedule A-3 of Title VIII of the Revenue Act of 1926 as amended by Section 723 (a) of the Revenue Act of 1932 (Title 26, Paragraph 901, Subdivision 3 of Schedule A.).

A comparison of the Florida Act with the Act of South Carolina and with the Federal Act will show that the Florida Act is much broader in its scope than the other Acts. The South Carolina and Federal Acts except from the operation thereof the following transactions:

(1) Agreements evidencing a deposit of certificates of shares of stock as collateral security for money loaned thereon, which certificates are not actually sold and the delivery or transfer for such purpose of certificates so deposited and loans of stock and the return of the stock so loaned:

(2) *Deliveries or transfers to a broker of certificates of shares of stock for sale and deliveries or transfers of*

such certificates by a broker to a customer for whom and upon whose order he has purchased the same.

The Florida Act does not exempt any of the above mentioned transactions, or any memorandum made in connection therewith. Since the Florida Act was taken in a large measure from the South Carolina Act, and the South Carolina Act exempts from the operation thereof, deliveries or transfers of certificates of shares of stock to a broker for sale, and deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased the same, it is reasonable to assume that the Florida Legislature intended to tax the memorandum of deliveries of shares of stock made in Florida in connection with these transactions between a broker and his customer.

The appellant takes the position that the following documents involved in this suit are subject to the Florida Documentary Stamp Tax Act:

1. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch office of the broker to *purchase* certain stocks for him upon a stock exchange located outside of the State of Florida:

(a) The memorandum made by the employees of the Florida branch office of the broker, which shows that the stock has been *purchased* as requested. This memorandum is taxable under the Act as a *memorandum of sale*, whether or not the same is delivered to the Florida customer.

(b) If the stock is delivered in Florida by the Florida branch office of the broker, and a receipt is made and de-

livered in Florida therefor, the same is taxable as a *memorandum of delivery* of stock.

2. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch office of the broker to *sell* certain stocks upon a stock exchange located outside of the State of Florida:

(a) The written order of the Florida customer to the Florida branch office of the broker to sell certain stocks, is taxable under the Act as a unilateral *agreement to sell.*

(b) If the stock which is ordered by the Florida customer to be *sold,* is delivered by him to the Florida branch office of the broker, and a receipt is taken therefor, this is taxable as a *memorandum of the delivery of the stock.*

(c) The memorandum made by the Florida branch office of the *sale* of the stock, pursuant to the order to sell given by the Florida customer to the Florida branch office of the broker, is taxable as a *memorandum of sale,* whether or not the memorandum, or a copy thereof, is delivered in Florida to the Florida customer.

3. In the case of a *purchase* by the broker of stock on the stock exchange in a State other than the State of Florida for a Florida customer, and in the case of a *sale* of stock on a stock exchange in a state other than the State of Florida, there is made in the books in the office of the Florida branch office, a memorandum of the sale, and if no other memorandum of the sale or of the delivery is made in Florida, then the entry in the books in the Florida office of the broker is taxable under the Act as a *memorandum of sale.*

The appellant only claims that a tax should be paid upon the instruments, documents or memoranda *actually*

made in Florida. While there may be several of these instruments, documents or memoranda made in Florida in connection with the same transaction, which are taxable under the Act, it is conceded by the appellant that as to a particular purchase or sale, not more than one of such instruments or documents relating thereto would be taxable.

DEFINITION OF TERMS INVOLVED.

We wish to call to the attention of the Court the difference between a stockbroker and an ordinary broker:

> "*Between Stockbroker and Ordinary Broker.* An ordinary broker is generally a mere negotiator, acting avowedly for another as principal and having neither the title to, nor possession of, the property bought or sold. *The functions of a stockbroker, however, are in a great majority of his transactions much broader. He makes the purchase in his own name, frequently paying all or a part of the purchase price, and is intrusted with the possession of the securities dealt in, receiving or delivering them without the name of his principal appearing in the transaction.*"
>
> (Italic supplied.)
>
> 9 C. J. 511.

In considering what construction should be placed upon the words "memoranda of sales" as used in the first line of paragraph (4) of Section One of the Act, it may be well to consider the definition of the word "sale", and the word "memorandum":

(a) *SALE*

> "SALE. 1. Act of selling; a contract whereby the absolute, or general, ownership of property

is transferred from one person to another for a price, or sum of money, or, loosely, for any consideration;"

Webster's New International Dictionary, page 1871.

"A 'sale' is a contract by which property is transferred from the seller to the buyer for a fixed price in money paid or agreed to be paid by the buyer. DeBary vs. Dunne, 172 Fed. 940." Words and Phrases, (2d) Volume 4, page 436.

"The distinction between an 'actual sale' and a mere 'executory agreement to sell' personal property is that in the former the thing which is the subject of the contract becomes the property of the buyer the moment the contract is concluded, and without regard to the fact whether the goods be actually delivered to the buyer, or remain in the possession of the seller; while in the latter the goods remain the property of the seller till the contract is executed. Idaho Implement Co. v. Lambach, 101 Pac. 951, 955, 956, 16 Idaho, 497."

Words and Phrases, (2d) Volume 4, page 443.

(b) *MEMORANDUM.*

"MEMORANDUM. An informal record of something which it is desired to remember, or to preserve for future use, esp. of the writer; a note to help or jog the memory.
(2) Law. A brief or informal note in writing of some transaction, or an outline of an intended instrument; an instrument drawn up in a brief and compendious form;"

Webster's New International Dictionary, page 1348.

"A memorandum is defined to be a note to help the memory. Barber v. Bennett, 4 Atl. 231, 236,

58 Vt. 476, 56 Am. Rep. 565; Hay v. Peterson, 45 Pac. 1073, 1080, 6 Wyo. 419, 34 L. R. A. 581; Seymour v. Cowing (N. Y.) 4 Abb. Dec. 200, 205; 40 N. Y. (1 Keyes) 532, 536."

Words and Phrases (1st ed.) Volume 5, Page 4472.

"MEMORANDUM OR NOTE OF AGREEMENT" DISTINGUISHED. There must be a difference between agreement and memorandum or note of agreement. And what must that be? I take it, the difference between completeness and incompleteness. Agreement is the contract complete; memorandum or note of agreement is the contract incomplete, imperfect, even, it may be, somewhat inaccurate, but which may aid us in getting at the complete contract. Durham v. Taylor, 29 Ga. 166, 176."

2 C. J. 981.

DISCUSSION OF AUTHORITIES SUPPORTING CONTENTIONS OF APPELLANT.

The words "*memorandum of such sale*" appear in the *proviso* of the quoted part of the Florida Act. It will be observed that the proviso undertakes to limit and to detail what shall be done in reference to "sales" of shares or certificates of stock, which *sales are made in Florida.* So the words "memorandum of sale" as used in the *proviso* have reference solely and only to sales of shares or certificates of stock, *which are actually made in Florida.* This *proviso* in the Act has no application to any memorandum of sale or memorandum of delivery of shares or certificates of stock, unless *the sale of the shares or certificates of stock was actually made in Florida.* If

the sale occurs elsewhere than in the State of Florida then the *proviso* does not apply.

It is apparent from the definitions of the word "sale" and the word "memorandum" together with the use of the phrase "memoranda of sales" in the first line of Paragraph (4) of Section 1 of the Act that all *memoranda made in Florida* of sales made outside of the State of Florida will be subject to the terms of the Act. The Legislature did not intend that a memorandum of sale as referred to in the Act should be a memorandum such as is required in the sale of personal property under the Statute of Frauds. The Act does not require the memorandum to be signed by either party nor is there any indication that the memorandum would necessarily constitute a contract between the parties. If the Legislature had intended that this memorandum should be signed by the parties, it would have been an easy matter for such requirement to have been included in the Act.

There are only three cases from the Supreme Court of Florida which deal with the Act under consideration.

The first case is: *STATE EX REL PACKARD v. COOK*, 108 Fla. 157, 146 So. 223. That was a suit by Packard to have the Court determine whether or not an assignment of wages for less than one hundred ($100) dollars is subject to the Documentary Stamp Tax Act. In discussing this matter the Court said:

> *"The tax is levied in terms and without any exceptions on the specified subjects. But the rate of the tax is according to the amount of debt or obligation evidenced by such subjects.* Notwithstanding the fact that the amount of a debt or obligation evidenced in special cases is less than

> $100 with respect to a particular instrument, no legislative intent to completely exempt the subject from taxation is demonstrated, because the legislative intent was clearly expressed to the effect that there should be levied, collected, and paid for *and in respect to the 'several' documents mentioned and described in schedule A (section 1) a tax* 'on' promissory notes, non-negotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation, as mentioned."
>
> (Italic supplied.)

The next Florida case is that of *ROBERT NELSON v. W. A. WATSON,* opinion filed November 28, 1933, and not yet reported. In this case the Court considered a document made in Florida which purported to be a furniture lease. The Court declared the document to be a mortgage which incorporated the certificate of indebtedness not otherwise shown in a separate instrument, and as such, to be subject to the tax under Paragraph 5 of Section 1 of the Act.

The next Florida case is that of *STATE EX REL. WILLIAM H. ROGERS, and LOUIS KURZ v. REX SWEAT,* 152 So. 432, wherein the Court decided that an assignment of mortgage, when the certificate of indebtedness is otherwise shown in a separate instrument, is not subject to the Documentary Stamp Tax.

The South Carolina Act has been passed upon by a Three-Judge Federal Court in the case of *GRANITEVILLE MFG. CO. v. QUERY,* 44 Fed. (2d) 64. While this case does not pass directly upon that section of the Act in which we are interested, it does deal at some length with the theory of the Documentary Stamp Tax. In that

case the Court held that promissory notes executed, by officers of the company, outside of the State and mailed to the payee bank, also outside of the State, were not subject to the Documentary Stamp Tax in the State where the corporation was domiciled, which was South Carolina. The Court also held that promissory notes executed by the corporation within South Carolina and mailed to a payee bank, outside of the State, were subject to the Documentary Stamp Tax. It was contended that since the notes could be recalled at any time by the maker before actual acceptance by the bank, and because the bank was under no obligation to accept them and might refuse to do so, that the notes were not *made, executed and delivered in South Carolina.* The Court, however, held:

> "But the tax in the present case is a tax upon the creation within the State of South Carolina of evidence of a debt. These notes were created, if not wholly, certainly partly, within the state of South Carolina. The object taxed, therefore, namely, the creation of the evidence, was within the state, and subject to the power of the state. *The tax is laid upon the documents themselves,* and required to be paid by the person who makes, signs, or issues them. The documents were within the state, made, signed, and issued there. None of these facts appears in any of the cases relied upon by the plaintiff. They give a legal, taxable situs in South Carolina." (Italic supplied) Text 69.

The Court in discussing the theory of the Documentary Stamp Tax said that the Act should receive a broad construction. The Court also said that the tax in question by the very terms of the Act is not a license tax but a Documentary Tax. The tax levied is a Documentary

Tax expressly so declared by the terms of the Act and is *levied directly upon the documents themselves.*

The above mentioned case was later before this Court and the opinion of the Court is reported in *283 U. S.* 376, 75 L. Ed. 1126. In the opinion, the Court said:

> "The tax as thus sustained is an excise tax, of a familiar sort, levied with respect to the *creation of instruments* within the state. So laid, the tax was not imposed upon property, *or upon the transfer of property situated beyond the* jurisdiction of the state."
> *"It is simply a tax levied in relation to an act done within the State in making an instrument."*
> (Italic supplied.)

The Lower Court in its opinion rendered in the case at bar on January 18th, A. D. 1934, said in part:

> "It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely completed outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel. Hatch vs. Reardon, 97 N. Y. S. 535. For a State to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312."

It has never been our contention nor do we now contend that the Florida Documentary Stamp Tax Act levies an

excise tax upon the actual purchase or sale of stock by the broker for the Florida customer *where the purchase or sale takes place in a State or country other than the State of Florida.* We agree with the Lower Court that such construction could not be sustained because to do so would have the effect of giving the statute an extra-territorial effect.

Our position is that the Florida statute is *only applicable to documents which are made in Florida.* For example: (1) When the broker *makes in Florida* a record or memorandum to the effect that he has purchased on the New York Stock Exchange, for the Florida customer, certain stocks, that memorandum is taxable as a memorandum of sale, because the *memorandum* is made in Florida; (2) When the broker delivers to the Florida customer the stock purchased in New York for him and the customer *signs a receipt in Florida* for the stock, this is taxable as a memorandum of delivery of stock because the *memorandum is made* in Florida; (3) When the Florida customer signs, either by using his signature or by the use of his account number, or has signed for him by the broker, an order to sell certain stock on the New York Stock Exchange, this order is taxable as a unilateral agreement to sell, because *the order is made in Florida.* See *GRANITEVILLE MFG. CO. VS QUERY, supra.* (4) When, in connection with the order to sell as in (3) above, the customer delivers to the broker certain stocks and the broker makes out and delivers to him in Florida a receipt therefor, the same is taxable as a memorandum of delivery of stocks, because the *memorandum of delivery is made in Florida;* (5) When the Florida branch office of the broker makes an entry in its books or makes a memorandum of the sale of stocks on the New York

Stock Exchange in New York, for the Florida customer, this is taxable as a memorandum of sale, because the *memorandum of sale is made in Florida.*

The Lower Court, in its opinion above referred to, said that to tax such memoranda of sales made without the State as passes in Florida between the broker and the customer, would be giving to the statute extra-territorial effect and the Court cited as authority the case of *HATCH VS REARDON, supra.* In that case the facts were briefly as follows:

A non-resident of New York sold certain shares of stock in a non-resident corporation, in the State of New York to a non-resident of New York, and the State of New York claimed that the Documentary Stamp Tax should be paid on the sale because it took place in that State. It was contended that the enforcement of the tax in this manner would give extra-territorial effect to the statute. This Court said that the tax was upon the *sale or contract as made in New York,* and the State had the right to tax the contract made there, and that this construction would not give to the statute extra-territorial effect. See *HATCH VS REARDON,* 204 U. S. 152, 51 L. Ed. 415. If the appellant in the present case contended that the sale of stock which takes place in New York is taxable in Florida, then the Reardon case would be applicable. But no such contention is made by the appellant, and we respectfully suggest that the cited case is not authority for the opinion of the Lower Court in the present case.

The Lower Court said in its opinion above referred to that the enforcement of the statute against the appellees by the appellant, would be taxing property beyond the jurisdiction of the State, and that this would amount to

the taking of the property of the appellees without due process of law. The Court cited the cases of *FRICK VS PENNSYLVANIA,* 268 U. S. 473, 69 L. Ed. 1058; *FIRST NATIONAL BANK VS. MAINE,* 284 U. S. 312, 76 L. Ed. 313. In both cases the statutes undertook to levy an excise tax upon the *transfer* of property upon the death of the owner thereof, when the property transferred was not in the State, and the State did not have jurisdiction thereof. In the present case *no attempt is made to tax any property whatever; the tax under our law is an excise tax upon documents made in Florida.* So we find that the cited cases are not applicable to the present case. The so-called "Insurance cases," such as *ALLGEYER VS STATE OF LOUISIANA,* 165 U. S. 578, 41 L. Ed. 832, and *ST. LOUIS COTTON COMPRESS CO. VS ARKANSAS,* 260 U. S. 346, 67 L. Ed. 297, cannot be considered as authority for the proposition that the taxation of the documents made in Florida as contended for by the appellant, would result in a violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. In the cited cases the tax was upon contracts insuring property located in the respective States. The tax was upon the *contracts,* which in both cases *were made and executed outside the State,* which sought to impose the tax. In the present case no effort is made to tax any contract made outside of Florida. The tax imposed in our case "is an excise tax of a familiar sort levied with respect to the creation of instruments within the State. So laid, the tax" is "not imposed upon property or upon the transfer of property situated beyond the jurisdiction of the State." *GRANITEVILLE MFG. CO. VS. QUERY,* 283 U. S. 376, 75 L. Ed. 1126.

The documents made in Florida that are subject to the tax are not required to be in any particular form nor are they necessarily contracts between the customer and the broker. For example, the memorandum made in Florida by the broker of a sale of stock which took place in some other State for the customer, which gives the information to the customer that the sale has been made and the price at which the sale was made, would be such a memorandum as would be taxable under the Act. It cannot be said that this would be taxing a transaction taking place in some State other than Florida for the sale has been *completed in some other State.* It is not essential to the completion of the sale that a memorandum thereof be made in Florida, and the same is true of the memorandum of delivery of stock which is made in Florida. The sale is completed without the execution of these *instruments.* Surely the State of Florida has a right to tax the making of documents or instruments in Florida, just as this Court said in the Reardon case, supra, that New York had the right to tax contracts made in that State.

We respectfully suggest that this Court may well follow its decision in the case of GRANITEVILLE MFG. CO v. QUERY, supra, and the opinion of the Three-Judge Court in the same case, supra, which declared that the South Carolina Act should receive a broad construction, and that in doing so, the contentions of the appellant as to the documents referred to herein as being subject to the provisions of the Act, will be sustained.

The appellees suggest that the Act violates Clause 3, Section 8 of Article I. of the Constitution of the United States and Section I of the Fourteenth Amendment to the Constitution of the United States and Section 12 of

the Declaration of Rights of the Constitution of the State of Florida.

We think the contention of the appellees that the Act violates the Commerce Clause of the Federal Constitution has been settled adversely to them by the cases of

WARE AND LELAND, v. MOBILE COUNTY, 209 U. S. 405, 52 L. Ed. 855;

GRANITEVILLE MFG. CO. v. QUERY, supra.

The contention of the appellees that the Act violates Section 1 of the Fourteenth Amendment of the Constitution of the United States and that it violates Section 12 of the Declaration of Rights of the Constitution of Florida has been settled adversely to them by the cases of:

GRANITEVILLE MFG. CO. v. QUERY, supra;
HATCH v. REARDON, supra.

All of which is respectfully submitted,

CARY D. LANDIS,
Attorney General of Florida.

H. E. CARTER,
Assistant Attorney General.

ROBERT J. PLEUS,
Assistant Attorney General.

J. V. KEEN,
Assistant Attorney General.

All of Tallahassee, Florida,
Solicitors for the Appellant.

APPENDIX "A"

FLORIDA DOCUMENTARY STAMP TAX

Act of 1931

CHAPTER 15787—(No. 69).

AN ACT Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association, or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A.

SCHEDULE A.

On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons

or in registered form, on each $100 of the face value or fraction thereof, 10c, provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interest in property or accumulations, by any corporation, on each $100.00 of face value, or fraction thereof, 10c: Provided, that where a certificate is issued without face value, the tax shall be 10c per share, unless the actual value is in excess of $100.00 per share, in which case the tax shall be 10c on each $100.00 of actual value or fraction thereof. The stamps representing the tax imposed by this subdivision shall be attached to the stock books, and not to the certificates issued.

On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10c; and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each

share: Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each $100.00 of the indebtedness or obligation evidenced thereby, 10c. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each $100.00 of the consideration therefor, 10c: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of 10c for each $100.00 or fractional part thereof of the consideration therefor.

On proxies for voting at any election for officer or meeting for the transaction of business of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10c each.

On powers of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 10c.

Section 2. That the administration of this Act shall be vested in the Comptroller of the State of Florida, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this Act. He shall have power to enter upon the premises of any taxpayer, and to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this Act. Any person, firm or corporation subject to this tax, who shall by any practice or evasion

make it difficult to enforce the provisions of this Act by inspection, or any person, firm or corporation, agent or officer thereof, who shall, after demand by the Comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the taxpayer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Clerks of the Circuit Court shall report to the Comptroller the names and addresses of any and all individuals, firms or corporations, who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such Clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

Section 3. The Comptroller of the State of Florida shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for the affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this Act.

All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this Act, so far as applicable, for the purpose of collect-

ing stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

Section 4. Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this Act, without cancelling or obliterating such stamps as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, any adhesive stamp used in pursuance of this Act, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession

any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or wilfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Five Hundred ($500.00) Dollars, or imprisonment of not less than Twelve Months, or both at the discretion of the Court.

Section 5. That whenever an adhesive stamp is used for denoting any tax imposed by this Act on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Comptroller of Florida may prescribe such other method for the cancellation of such stamps as he may deem expedient.

Section 6. All taxes collected under the provisions of this Act shall be paid into the State Treasury to the credit of the General Revenue Fund of the State of Florida, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

Section 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

Approved July 28, 1931.

APPENDIX "B"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA. IN EQUITY.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, SELDEN F. WHITE, HENRY HOLT, WILLIAM L. MEFFERT, ALFRED S. ROGERS, TIMOTHY P. BROSNAN, HAROLD N. SCOTT, JOHN W. JORDAN, GEORGE H. ROSS, JAMES A. KIERNAN, HENRY T. HERMES, and BENJAMIN E. BILLINGS, Co-partners, trading and doing business under the firm name and style of THOMSON & McKINNON, and ALPHEUS C. BEANE, CHARLES E. FENNER, JOSEPH N. CARPENTER, R. BROWDER FLINN, EARL H. HULSEY, JOHN McCORKLE, ROB'T A. McCORD, JOHN L. JULIAN, SULLY C. PECOT, ALFRED S. WYLLIE, JAMES P. BUTLER, LESLIE L. VIVIAN, HUGH W. LONG, HERBERT R. HASTINGS, E. WRIGHT NOBLE, CURTIS B. DALL, VICTOR B. COOK, NORMAN WEIDEN, LOUIS W. LAUDICK, and HOYLE JONES, Co-partners trading and doing business under the firm name and style of FENNER, BEANE & UNGERLEIDER,

Plaintiffs,

vs.

J. M. LEE, as Comptrolled of the State of Florida,

Defendant.

In Equity. Suit by John P. Bickell and others against J. M. Lee, as Comptroller of the State of Florida. On

defendant's motion to dismiss the bill of complaint as amended and plaintiff's motion for an interlocutory injunction.

SHUTTS & BOWEN, of Miami, Fla., for Plaintiffs.

CARY D. LANDIS, Attorney General,

ROBERT J. PLEUS and

J. V. KEEN, Assistants Attorney General, of Tallahassee, Florida, for Defendant.

Before BRYAN, Circuit Judge, and SHEPPARD and AKERMAN, District Judges.

SHEPPARD, District Judge.

The plaintiffs, who comprise two co-partnerships and who are engaged in the business of stock brokers, seek injunctive relief against the Comptroller of the State of Florida by a bill to restrain the enforcement of the Stamp Tax Act (Chapter 15,787, Laws of Florida, 1931), on the ground that the same violates the Constitution of The United States (Article I, Section 8, Clause 3) by laying an undue burden on interstate commerce, and that such enforcement of the Act deprives plaintiffs of their property without due process of law (Article 14, Section 1).

The Act assailed levies a tax of 10c per $100.00, inter alia, upon

> "all sales, agreements to sell, or memoranda of sales or deliveries of, transfers or legal title to shares, or certificates of stock * * * * * whether made upon or shown by the books of the corpora-

> tion, or by any assignment in blank, or by any delivery, or by any paper or agreement of memorandum or other evidence of transfer or sale * * * * *". Also, "promissory notes, non-negotiable notes, written obligations to pay money, * * * * * made, executed, delivered, sold, transferred or assigned in the State of Florida * * *".

While the plaintiffs are not citizens of Florida, they maintain branch offices in the State through which they act as agents for their Florida customers in the capacity of commission brokers by making purchases and sales of stock on the New York Stock Exchange and on other Exchanges outside of the State of Florida. The practice and procedure followed by the two firms in representing their customers on the Stock Exchanges is set out in extenso in the Bill of Complaint, and is that substantially followed by all stock brokers. It is sufficiently disclosed by the bill that all purchases and sales of stock and the actual delivery is made in the State of New York, or other state in which the Exchange is located, between the floor members or brokerage firms who take part in such transactions similtaneously with full payment for the stock. The brokerage firm, acting as agent for its Florida customers, completes the transaction outside of the State of Florida. Prior to the completion of the transaction the only written documents passing between the brokerage firm and the customer in Florida are the written requests of the customer that the firm purchase or sell for his account, and copies of telegraphic communications from the New York Office of the broker advising the customer that such requests have been complied with.

Defendant's motion to dismiss is upon general grounds, that the bill is without equity, plaintiffs having their remedy at law, that it is not alleged that each of the plaintiff brokerage firms will be damaged in an amount in excess of $3000.00; that there is a misjoinder of causes of action and of parties plaintiff. After argument counsel for plaintiffs were allowed to amend so as to sufficiently allege damages to each party in the jurisdictional amount.

The jurisdictional amount for each party plaintiff, and diversity of citizenship being properly averred, all questions of jurisdiction may be disposed of by our holding that plaintiffs' remedy at law is not plain, adequate and complete. It is alleged in the bill that the payment of each tax under the Act is a separate transaction and consequently the recovery of such payments at law would require a multiplicity of suits and this alone, we conclude, is sufficient to give a court of equity jurisdiction.

There is no merit in defendant's contention that there is a misjoiner of parties plaintiff or of causes of action. The joinder is clearly within the scope of Federal Equity Rule 26 which allows a joinder where sufficient grounds appear for uniting the causes of action in order to promote the convenient administration of justice. That this ground for joinder applies to parties plaintiff as well as defendants is, it appears, well settled; see, International Organization, etc., vs. Red Jacket C. C., etc., 18 F. (2d) 839; and Shamrock Mfg. Co. vs. Radio Corp., 37 F. (2d) 675.

It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely com-

pleted outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel Hatch vs. Reardon, 97 N. Y. S. 535. For a state to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312.

However, where a sale is made of stock of a Florida corporation and a transfer made upon the books of the corporation in Florida, the State may properly tax the transfer as one made within the State. See People ex rel Hatch vs. Reardon, Supra.

Although the point was not argued by counsel nor directly presented in the bill, the allegations of the bill disclose a transaction with reference to the marginal accounts of Florida customers with the brokers' agents in Florida. In view of this showing by the bill, even though not put in issue, we deem it advisable, as a cautionary suggestion, to decide once for all that such transactions are subject to the tax. The agreement which the customer is required to sign upon opening a marginal account is attached to the bill as an exhibit. It provides that any and all securities, commodities and other property held by the broker for the account of the customer shall constitute collateral security for any and all of the obligations of the customer to the broker. Upon the execution of such an agreement and the deposit of security the broker advances a portion of the purchase price of the stocks which the customer wishes to buy on margin.

This is clearly a loan of money or credit by the broker to the customer and is a transaction collateral to the purchase or sale of stock. The transaction takes place entirely in Florida and is similar to the execution of a collateral note to secure a loan from a bank. This collateral agreement may be subject to the tax in accordance with the amount of money loaned thereunder as it is a written obligation to pay money which is made, executed and delivered in the State of Florida.

Interlocutory injuction will issue in conformity with the views here expressed.

APPENDIX "C"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA. IN EQUITY: NO: T-14

JOHN P. BICKELL, et al, Co-partners trading and doing business under the firm name and style of THOMPSON & McKINNON, and ALPHEUS C. BEANE, et al, co-partners trading and doing business under the firm name and style of FENNER, BEANE & UNGERLEIDER,

Plaintiffs,

vs.

J. M. LEE, as Comptroller of the State of Florida,

Defendant.

Final Decree Granting Permanent Injunction

This cause coming on for final hearing before this Court composed of the undersigned three Judges, con-

voked pursuant to Section 266 of the Judicial Code, due and proper notice having been given of the time and place of such hearing; and a stipulation of the facts and evidence having been filed herein, and counsel for the respective parties having been heard, it is, therefore, found and decreed by this Court as follows:

1. The facts and matters set forth in the said stipulation of facts are adopted as the facts of this case and in our opinion sustain the material allegations of the bill of complaint as amended.

2. The facts as found in the opinion of this Court previously filed and adopted, and which was rendered in connection with the granting of the interlocutory injunction herein, are hereby adopted as the findings of this Court on final hearing.

3. The conclusions of law as contained and set forth in the aforesaid opinion are hereby made the conclusions of law of this Court upon final hearing, except as to the marginal cutomers agreements being a written obligation to pay money and taxable under the Act in question. This exception is made because it appears from the stipulation of facts, and is conceded by counsel for defendant, that no tax is due thereon under said Act.

It is, therefore, ordered, adjudged and decreed that the interlocutory injunction heretofore granted herein, be, and the same is, hereby made permanent, and that the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by,

through or under his direction or administration, be and they are hereby permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be

enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

DONE AND ORDERED at Pensacola, Florida, this 10th day of March, A. D. 1934.

N. P. BRYAN,
U. S. Circuit Judge.

ALEXANDER AKERMAN,
U. S. District Judge.

Wm. B. SHEPPARD,
U. S. District Judge.